

CHAPTER 2  
RULE MAKING AND DECLARATORY RULINGS

[Prior to 11/19/86, Racing Commission[693]]  
[Prior to 11/18/87, Racing and Gaming Division[195]]

**491—2.1(99D,99F) Commission rule making.** The commission shall make rules in accordance with Iowa Code section 17A.4.

**491—2.2(99D,99F) Oral presentations.** When requested by the persons or groups enumerated in Iowa Code section 17A.4(1)“b,” an opportunity for an oral presentation shall be scheduled on the agenda of the next regularly scheduled commission meeting held not less than 35 days after the publication of notice. The request must be presented at the commission office within 21 days of the publication of the Notice of Intended Action and must identify the proposed rules subject to the request by ARC number and by the specific citation of the proposed rule upon which presentations are to be made.

**2.2(1) Notice.** When so requested under the provisions of rule 2.2(99D,99F), the administrator shall use discretion in scheduling an opportunity for oral presentations by publishing a notice of the opportunity in the Iowa Administrative Bulletin, which shall refer to the ARC number and citation of the proposed rule, and which shall give the public not less than 20 days’ notice of the date, time and place of the meeting. Additional notice shall be mailed to all persons who have requested the opportunity for an oral presentation.

**2.2(2) Conduct of meetings.** The acting chairperson of the commission shall serve as the presiding officer at the meetings. At the commencement of the meeting, any person wishing to make an oral presentation shall advise the presiding officer of the person’s name, address and affiliation. The meetings shall be conducted in the same manner as any commission meeting and be governed by the 1990 Edition of Robert’s Rules of Order Newly Revised.

**491—2.3(99D,99F) Conferences or consultations.** In addition to the required rule-making procedures, the commission or designee may obtain viewpoints or advice concerning proposed rule making through informal conferences or consultations as the commission or designee may deem desirable.

**491—2.4(99D,99F) Adoption.** After all oral and written presentations and discussions have been completed, the commission shall consider final action on the proposed rule or defer final action to a subsequent meeting. Once the proposed rule has been adopted by the commission in final form, it shall then be made effective pursuant to the provisions of Iowa Code section 17A.5. Adoption of the rule must not be less than 35 days after the publication of Notice of Intended Action.

**491—2.5(99D,99F) Petition for rule making.** Any interested person may petition the commission to request the promulgation, amendment, or repeal of a rule. The petition for rule making shall be filed in the commission office, 717 East Court, Suite B, Des Moines, Iowa 50309. The petition shall either be mailed certified, return receipt requested, or may be delivered in person. An additional copy may be provided if the petitioner wishes to retain a filed stamped copy of the petition. The petition may be either typewritten or legibly printed in ink and must substantially conform to the following form:

IOWA RACING AND GAMING COMMISSION  
717 East Court, Suite B  
Des Moines, Iowa 50309

<hr/>	
Petition by _____ (Name) _____ )	
to (Amend, Adopt, or Repeal) _____ )	
Rules Relating to (state _____ )	PETITION FOR RULE
subject matter) _____ )	MAKING

(petition must state in separate numbered paragraphs)

- 1. Petitioner’s name and address and telephone number.
- 2. The nature of petitioner’s interest in the matter.
- 3. The text or substance of any requested rule adoption, amendment or repeal including the text and citation for any current rule in effect.
- 4. The reasons for seeking the requested action, including any statute, rule, data, evidence or arguments which are relevant to the request. Copies of any statute, rule, evidence, etc. should be attached to the petition.

\_\_\_\_\_  
Petitioner’s signature

**2.5(1) Procedure after petition is filed.** Upon filing of the petition, the administrator shall inspect the petition to ensure substantial compliance with the recommended form. If the petition does not contain the text or substance of the proposed amendment or fails to include copies of any cited statute, rule, or evidence, the administrator may reject the petition and return it to the petitioner along with the reasons for the rejection. Petitioner may then correct the reasons for rejection and refile the petition. A petition in substantial compliance with the recommended form shall be filed, stamped, and copies promptly sent to the commission members for further study.

**2.5(2) Commission action.** Within 60 days of the filing of a petition, the commission shall meet to consider the petition. The petitioner shall be given 20 days’ notice of the meeting and, at the discretion of the commission, may appear at the meeting and speak to the merits of the petition. The commission shall either grant the petition and commence rule making, or deny the petition and notify the petitioner in writing of the grounds for the denial.

**491—2.6(17A,99D,99F) General.** Any interested person may solicit oral or written advice from the administrator concerning the application or interpretation of any statute or administrative rule dealing with the racing commission. However, unless the request is made pursuant to Iowa Code section 17A.9, petition for declaratory ruling, any such advice is not binding upon the commission. Petitioners for a declaratory ruling must have a real and direct interest in a specific fact situation which may affect their legal rights, duties or responsibilities under statutes or regulations administered by the commission.

**491—2.7(17A,99D,99F) Petition for declaratory rulings.** A petition for a declaratory ruling shall be filed in the office of the Administrator, Iowa Racing and Gaming Commission, 717 East Court, Suite B, Des Moines, Iowa 50309. The petition shall either be mailed certified, return receipt requested, or may be delivered in person. An additional copy may be provided if the petitioner wishes to retain a filed stamped copy of the petition. The petition shall be typewritten and must substantially conform to the following:

IOWA RACING AND GAMING COMMISSION  
717 East Court, Suite B  
Des Moines, Iowa 50309

<hr/>	
Petition by _____ (Name) _____ )	
For a Declaratory Ruling on _____ )	
(state statute, rule citation _____ )	
to be ruled on) _____ )	
	PETITION FOR DECLARATORY RULING

(petition must state in separate numbered paragraphs)

- 1. Petitioner’s name, address and telephone number.
- 2. A clear, concise and complete statement of all relevant facts on which the ruling is requested.
- 3. A clear and concise statement of the controversy or uncertainty.
- 4. Reference to the statutory authority or rules in question, along with attached copies.
- 5. The reasons for prompting the petition and a full disclosure of petitioner’s interest.
- 6. Whether petitioner is currently a party to a contested case, rule making or judicial proceeding involving the controversy or uncertainty.
- 7. The names and addresses, when known, of other persons who may be affected by the declaratory ruling.

\_\_\_\_\_  
(Petitioner’s signature)

**491—2.8(17A,99D,99F) Procedure after petition is filed.**

**2.8(1) Initial review.** Upon filing of the petition the administrator shall inspect the petition for substantial compliance with the recommended form, and may reject a petition which fails to contain one or more of the required statements.

*a.* The administrator shall conduct an initial review of the petition and may request the petitioner to provide additional facts or provide greater specificity and detail in the questions posed. A request shall be made within ten days of the filing of the petition. If the requested information is not provided within 30 days of receipt of the request, the petitioner will be deemed to have withdrawn the petition.

*b.* The administrator shall then draft a proposed ruling or declination to rule within 20 days of the receipt of additional information or of the filing of the petition, whichever is later. The petition for a declaratory ruling, the proposal by the administrator and copies of all evidence and arguments shall then be forwarded to the commission members for final action.

**2.8(2) Commission action.** Within 30 days of the receipt of the petition or additional information, whichever is later, the commission shall meet to consider the petition. Petitioner shall be given ten days' notice of the meeting and, at the discretion of the commission, may appear at the meeting and speak to the merits of the petition. After due consideration, the commission may:

- a. Adopt the proposed ruling of the administrator.
- b. Modify the proposed rule and adopt the modification.
- c. Instruct the administrator to obtain additional information pursuant to subrule 2.8(1).
- d. Instruct the administrator to prepare an alternate proposed ruling to be considered at the next meeting, if petitioner agrees to an extension of the time period.
- e. Decline to issue a ruling based upon one or more of the following:
  - (1) The issue in question is currently involved in a rule making, contested case or judicial proceeding.
  - (2) The petition does not contain sufficient facts to demonstrate that the petitioner will be aggrieved or adversely affected by failure to issue a declaratory ruling.
  - (3) The petitioner presents issues or facts which are unclear, overbroad or otherwise inappropriate as a basis upon which to issue a declaratory ruling.
  - (4) The petition indicates the petitioner seeks to obtain approval to engage in activities so borderline as to be of dubious legality, although perhaps marginally proper.
  - (5) The issue in question has been rendered moot by a change in circumstances, fact, or law.
  - (6) The issue in question depends upon peculiar facts which cannot be predicted or accurately described in advance.
  - (7) Other good and sufficient reasons, which shall be detailed in writing.

**2.8(3) Effect of a declaratory ruling.** A declaratory ruling adopted by the commission is binding upon both the commission and the petitioner on the questions of law dealt with in the ruling to the fact situation set out in the petition including such additional facts required by the administrator or commission in accordance with these rules.

These rules are intended to implement Iowa Code chapters 99D and 99F.

- [Filed 5/18/84, Notice 4/11/84—published 6/6/84, effective 7/13/84]
- [Filed emergency 10/20/86—published 11/19/86, effective 10/20/86]
- [Filed 10/23/87, Notice 9/9/87—published 11/18/87, effective 12/23/87]
- [Filed emergency 9/1/88—published 9/21/88, effective 9/1/88]
- [Filed 11/4/88, Notice 9/21/88—published 11/30/88, effective 1/4/89]
- [Filed 2/16/90, Notice 12/27/89—published 3/7/90, effective 4/11/90]
- [Filed 2/15/91, Notice 1/9/91—published 3/6/91, effective 4/10/91]
- [Filed 7/22/94, Notice 6/8/94—published 8/17/94, effective 9/21/94]
- [Filed 4/10/97, Notice 2/12/97—published 5/7/97, effective 6/11/97]
- [Filed 8/22/97, Notice 7/16/97—published 9/10/97, effective 10/15/97]